## REMARKS

At the time of the Second Office Action dated January 25, 2008, claims 1-18 were pending and rejected in this application.

Claim 4 has been amended to include the limitations previously presented in claim 5, and consequently, claim 5 has been cancelled. Applicant has cancelled claims 1-3 and 6-18 to remove these claims from further consideration in this application. Applicant is not conceding in this application that those claims are not patentable over the prior art cited by the Examiner, as the present claim cancellations are only for facilitating expeditious prosecution of the present application. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

### CLAIMS 6-18 ARE REJECTED UNDER 35 U.S.C. § 101

Claim 6-18 have been cancelled, and thus, the Examiner's rejection as to these claims is moot.

### CLAIMS 1-12 AND 16 ARE REJECTED UNDER THE SECOND PARAGRAPH OF 35 U.S.C. § 112

On page 3 of the First Office Action, the Examiner asserted that claims 1-12 and 16 are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

The Examiner identified that the term "thereof" to be indefinite. In response, Applicant has amended claim 4 to replace the term "thereof" with "of the system." The Examiner also identified the term "a multi-regression analysis" as being indefinite. In response, this term has been deleted. Applicant, therefore, respectfully solicits withdrawal of the imposed rejection to claim 4 under the second paragraph of 35 U.S.C. § 112.

**CLAIMS 1-10 AND 13-16 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY COHEN ET AL., U.S. PATENT NO. 6,011,918 (HEREINAFTER COHEN)**

On pages 4-6 of the Second Office Action, the Examiner asserted that Cohen identically discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.[1] Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.[2] As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference.[3] This burden has not been met.

[1] In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).
[2] See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).
[3] Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

As previously noted, claim 4 has been amended to include certain of the limitations previously presented in claim 5. With regard to claim 5, the Examiner identified column 3, lines 44-51 of Cohen as identically disclosing the limitations previously presented in claim 5. These cited passage is reproduced below:

> In particular embodiments of the present invention, the weighting of the relationships between the programmed methods is based on a textual analysis of the application written to execute on a single processing system. Alternatively, the weighting of the relationships between the programmed methods may be based on a result of a profiling analysis of the application written to execute on a single processing system.

As previously presented in claim 5, and now recited in claim 4, "past workload achievements in each class are used to estimate the workload of the classes." Upon reviewing this cited passage, Applicant is unclear where this passage teaches estimating the workload of the classes. Moreover, Applicant is unclear where this passage teaches that the estimation of the workload is based upon past workload achievements in each class. Thus, Cohen fails to identically disclose the claimed invention, as recited in claim 4, within the meaning of 35 U.S.C. § 102.

The remaining rejections are to claims that have been cancelled. Therefore, the rejections as to these claims are moot.

Applicant has made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicant invites the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicant hereby respectfully requests reconsideration and prompt allowance of the pending claims.

Although Applicant believes that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

> When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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